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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,596	10/19/2001	Mohammad Thudor	1171/39672/106	3006

7590                    07/15/2003

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EXAMINER

PAIK, SANG YEOP

ART UNIT	PAPER NUMBER
3742	8

DATE MAILED: 07/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/001,596	THUDOR ET AL.
	Examiner	Art Unit
	Sang Y Paik	3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_ .
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,7-9 and 11-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,6,10 and 18 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6,7</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4, 5, 7-9 and 11-17 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4, 5, 7-9 and 11-17 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, 3, 6, 10 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, there is no proper antecedent basis for “the variable”.

Claim 18 refers to the drawing figures for its claim limitation. Incorporation by reference to drawing figures fails to particularly and distinctly claim the subject matter which the applicant regards as the invention.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 3, 6, 10 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniell et al (US 6,050,260) in view of Daniell et al (US 5,558,084).

Daniell et al discloses the breathing assisting apparatus having a humidification means having an electrical input power for delivering the humidified gases, a transport pathway for conveying the humidified gases, a control means having instructions to determine parameters such as temperature, humidity and pressure that relate to the flow rate of the gases and to determine and to supply the electrical power necessary to produce the desired humidity. Daniell et al '260 further discloses the breathing apparatus claimed including the transportation pathway means having a heating element to reduce the condensation of the humidified gases. However, Daniell does not show a sensor for sensing the exterior ambient temperature.

Daniell et al '084 shows a breathing apparatus having an ambient temperature sensor to sense the exterior ambient temperature so as to further adjust a heating element in accordance to the ambient temperature sensor to prevent the condensation of the humidified gases. In view of Daniell et al '084, it would have been obvious to one of ordinary skill in the art to adapt Daniell et al '260 with an exterior ambient sensor to measure the exterior temperature to further control the heating elements to prevent the condensation of the humidified gases.

With respect to claim 6, Daniel et al' 084 further shows an indicator such as LED light that is in connection with a heating element to show whether or not the heating element is turned on or off. It would have been obvious to one of ordinary skill in the art to further adapt Daniell et al '260 with an indicator to enable the user that the heating element the operating condition of the heating element.

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With respect to the recitation of the first threshold and second threshold, Daniell et al '260 shows the control means which continuously monitors the changes in the parameter such as the temperature which maybe higher or lower than the set threshold temperature values to further control the required electrical power to maintain the parameter at a level to achieve the desired humidity.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grandon et al (US 6,349,722).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sang Y Paik whose telephone number is 703-308-1147. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

S.R.  
SYP

Sang Y Paik  
Primary Examiner  
Art Unit 3742

syp  
July 11, 2003